

§ 11.22

existing authority to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency or Indian tribe may assert trusteeship.

(c) *Limitations on emergency actions.* The natural resource trustee may undertake only those actions necessary to abate the emergency situation, consistent with its existing authority. The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the natural resource trustee.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5173, Feb. 22, 1988]

§ 11.22 Sampling of potentially injured natural resources.

(a) *General limitations.* Until the authorized official has made the determination required in § 11.23 of this part to proceed with an assessment, field sampling of natural resources should be limited to the conditions identified in this section. All sampling and field work shall be subject to the provisions of § 11.17 of this part concerning safety and applicability of resource protection statutes.

(b) *Early sampling and data collection.* Field samples may be collected or site visits may be made before completing the preassessment screen to preserve data and materials that are likely to be lost if not collected at that time and that will be necessary to the natural resource damage assessment. Field sampling and data collection at this stage should be coordinated with the lead agency under the NCP to minimize duplication of sampling and data collection efforts. Such field sampling and data collection should be limited to:

(1) Samples necessary to preserve perishable materials considered likely to have been affected by, and contain evidence of, the oil or hazardous substance. These samples generally will be biological materials that are either dead or visibly injured and that evi-

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dence suggests have been injured by oil or a hazardous substance;

(2) Samples of other ephemeral conditions or material, such as surface water or soil containing or likely to contain oil or a hazardous substance, where those samples may be necessary for identification and for measurement of concentrations, and where necessary samples may be lost because of factors such as dilution, movement, decomposition, or leaching if not taken immediately; and

(3) Counts of dead or visibly injured organisms, which may not be possible to take if delayed because of factors such as decomposition, scavengers, or water movement. Such counts shall be subject to the provisions of § 11.71(l)(5)(iii) of this part.

§ 11.23 Preassessment screen—general.

(a) *Requirement.* Before beginning any assessment efforts under this part, except as provided for under the emergency restoration provisions of § 11.21 of this part, the authorized official shall complete a preassessment screen and make a determination as to whether an assessment under this part shall be carried out.

(b) *Purpose.* The purpose of the preassessment screen is to provide a rapid review of readily available information that focuses on resources for which the Federal or State agency or Indian tribe may assert trusteeship under section 107(f) or section 126(d) of CERCLA. This review should ensure that there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment.

(c) *Determination.* When the authorized official has decided to proceed with an assessment under this part, the authorized official shall document the decision in terms of the criteria provided in paragraph (e) of this section in a Preassessment Screen Determination. This Preassessment Screen Determination shall be included in the Report of Assessment described in § 11.90 of this part.

(d) *Content.* The preassessment screen shall be conducted in accordance with the guidance provided in this section and in § 11.24—Preassessment screen—information on the site and § 11.25—Preassessment